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July 17, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

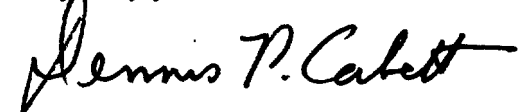
Re: **Petition for Rule Making**

Dear Ms. Salas:

On behalf of Davis Television Topeka, LLC, I am transmitting herewith an original and four copies of its Petition for Rule Making seeking to amend the Television Table of Allotments to specify Channel 55 in lieu of Channel 43, at Topeka, Kansas, under the circumstances specified therein.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Dennis P. Corbett

RGG:rg
Enclosures

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.606(b)
Television Table of Allotments
(Topeka, Kansas)

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JUL 17 2000

COMMUNICATIONS DIVISION
JUL 17 2000

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

Davis Television Topeka, LLC ("Davis"), sole applicant for a construction permit for a new television station at Topeka, Kansas, on Channel 43, pursuant to the provisions of Section 1.401 of the Commission's Rules and pursuant to the Commission's Public Notice, DA 99-2605, released November 22, 1999 ("November 22 Notice") as extended by Public Notice, DA 00-536, released March 9, 2000 ("March 9 Notice"), hereby requests that, to the extent necessary (as explained below), the Commission institute a rule making proceeding to amend Section 73.606(b), the Television Table of Allotments, by substituting Channel 55 in lieu of Channel 43.

This Petition is being filed in response to the Commission's opening of a filing window (the "Filing Window"), on November 22, 1999, within which pending NTSC applicants, such as Davis, at locations inside the "TV Freeze Areas" (as defined in the November 22 Notice) have been given an opportunity to amend their applications or seek substitute allotments as

necessary to adapt to channel allotments made by the Commission as part of the ongoing FCC effort to effect a conversion of the United States television industry from NTSC to digital (“DTV”). See November 22 Notice. The closing date for that window was subsequently extended from March 17, 2000 to July 15, 2000. See March 9 Notice.^{1/}

In establishing the Filing Window, the Commission also noted its then pending rule making proceeding to establish a new Class A service and put NTSC applicants on notice that if new Class A stations were ultimately given priority over pending NTSC applications, the NTSC applications could be dismissed. November 22 Notice at 2. In extending the Filing Window’s closing date, the FCC noted the pendency of its Class A rulemaking as mandated by Congress (MM Docket 00-10) as a justification for the extension. March 9 Notice at 1-2. This Petition results from Davis’ review of the published list of LPTV stations certified as eligible for Class A status. See Public Notice, DA 00-1224, released June 2, 2000 (“June 2 Notice”). In light of: (i) a conflict between NTSC full power Channel 43 at Topeka and an LPTV station on the Class A eligible list (described below), (ii) the impending closing of the Filing Window in which the potential for conflict with Class A stations was expressly acknowledged, and (iii) the Commission’s decision in MM Docket No. 00-10 not to protect pending NTSC applications against the new Class A stations,^{2/} Davis believes the most prudent course is for it to file this protective Petition before the close of the Filing Window.

^{1/} Because July 15, 2000 falls on a Saturday, the Filing Window closes on July 17, 2000. See 47 C.F.R. § 1.4(j).

^{2/} The FCC has been asked to reconsider this decision not to protect NTSC applications.

Montgomery Communications, Inc. ("Montgomery"), licensee of LPTV station K43EO, Channel 43, Topeka, Kansas, has filed a Certificate of Eligibility for Class A status that was accepted by the Commission in the June 2 Notice. If Montgomery files an application for Class A status which is granted by the Commission, K43EO's Class A status will directly conflict with operation of a full-power NTSC station on Channel 43 at Topeka. See Engineering Statement of Bernard R. Segal, P.E. (the "Engineering Statement") at 2, attached hereto as Exhibit A. Although it is not certain whether Montgomery will be awarded a Class A license, its potential grant makes the filing of this protective Petition necessary.^{3/} Davis therefore requests that this Petition be released for comment if and when K43EO is awarded a Class A license.

The Engineering Statement establishes that Davis' proposal is in full accord with all applicable coverage and allocation criteria set forth in the Commission's rules. Channel 55 may be allotted for NTSC use without creating any new interference to any NTSC or DTV facilities. See Engineering Statement at 3-4. The proposed allotment satisfies all Commission criteria with respect to NTSC and DTV station protection. See Engineering Statement at 3-4. As required by the Commission's rules, all of Topeka is included within the calculated Principal City Grade Contour of Channel 55, as proposed. See Engineering Statement at 4.

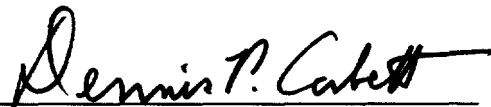
^{3/} While the timing of the filing of this Petition is somewhat unusual due to the still uncertain Class A fate of K43EO, Davis does not want to face an argument that it failed to do everything possible within the Filing Window period to preserve this important full-power allotment in the face of the new reality of the Class A service.

If K43EO is granted Class A status and this Petition is granted, Davis will timely file an amendment to its application for Channel 43 specifying operation on Channel 55 and, if granted, will adhere to all applicable Commission standards for the construction and operation of its facility. If K43EO is not granted Class A status and no other Class A-related conflicts have arisen, this Petition will become moot and will be withdrawn by Davis, leaving Davis free to prosecute its application for Channel 43, at Topeka.

THEREFORE, for the reasons set forth above, to the extent necessary under the circumstances set forth above, a rule making proceeding should be instituted proposing the amendment of Section 73.606(b) of the Commission's Rules to substitute Channel 55 for Channel 43 at Topeka in the Television Table of Allotments.

Respectfully submitted,

DAVIS TELEVISION TOPEKA, LLC

By: 
Dennis P. Corbett
Ross G. Greenberg

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809
202-429-8970

July 17, 2000

Its Attorneys

EXHIBIT A

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

**ENGINEERING STATEMENT
PREPARED ON BEHALF OF
DAVIS TELEVISION TOPEKA, LLC
TOPEKA, KANSAS**

This Engineering Statement has been prepared on behalf of Davis Television Topeka, LLC (hereafter, Davis), the applicant in BPCT-19960920LZ for a new NTSC television facility at Topeka, Kansas. The application specifies operation on Ch. 43z with peak visual effective radiated power of 2750 kW (MAX-DA, BT) and antenna radiation center height above average terrain of 417 meters.

The instant Engineering Statement supports a Petition for Rulemaking to amend the NTSC Table of Allotments, Section 73.606, to specify Ch. 55- at Topeka, Kansas, in lieu of Ch. 43z. The Public Notice of November 22, 1999, DA99-2605, made clear that a Petition for Rule Making with a DTV related basis for a replacement NTSC allotment would be entertained, but that Public Notice also noted the future potential for conflict with a new Class A TV service then being considered by the Commission. In the present instance, no DTV related basis exists. However, a Class A LPTV related

problem has the potential for rendering the existing Topeka, Ch. 43z, allotment unusable. Station K43EO, Topeka, Ch. 43 has been certified as eligible for Class A status. Station K43EO is only 14.4 kilometers from the Davis Topeka, Ch. 43z site. If station K43EO ultimately achieves Class A status, Topeka NTSC Ch. 43z would be unusable. Hence, to the extent necessary, a waiver of the DTV related constraint in the DA-99-2605 Public Notice is requested for this protective Petition for Rule Making.

The proposed Ch. 55- allotment is for operation from the same site that is currently specified in the pending Ch. 43z application. All separation requirements of Section 73.610 of the Rules are satisfied on Ch. 55- as is demonstrated in Exhibit No. 1. The proposed allotment is for operation with peak visual effective radiated power of 5000 kW (MAX-DA) with antenna radiation center height above average terrain of 417 meters. The Antenna Structure Registration Number for the proposed tower is: 1054301. Particulars for the proposed directional antenna are provided in Exhibits No. 3 and 4. Exhibit No. 3 is the azimuth pattern, and Exhibit No. 4 is a tabulation of data for the pattern of Exhibit No. 3.

Exhibit No. 2 provides the results of a detailed study demonstrating that the proposed allotment will not create new interference to the only DTV facility of interest, KOTV-DT, Tulsa, Oklahoma, Ch. 55. The study of Exhibit No. 2 was performed using a FCC matched computer analysis taking into account all allocation factors. A computer using an Alpha processor was employed in conjunction with the FCC's FLR software. For the target desired station that was studied, the reference information from Appendix B of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket Number 87-268* is listed in Exhibit No. 2 for comparison with the results obtained independently using the Alpha processor with the FCC's FLR software. The independently determined calculation results are in excellent agreement with the FCC's Appendix B results.

The initial study was made without consideration of the proposed Ch. 55- Topeka allotment. Afterwards, a second study was performed with the Topeka allotment included. By this means, it was possible to ascertain the impact that the proposed allotment would have on the DTV facility of interest. As demonstrated in Exhibit No. 2, the proposed allotment satisfies all FCC criteria with respect to DTV station protection.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Davis Television Topeka, LLC
Topeka, Kansas

Page 4

No NTSC station and no eligible Class A low power TV station operate on a cochannel, plus or minus first adjacent channel, or other taboo channel within a range of interest of the proposed Ch. 55- allotment to warrant consideration.

The presently pending application for construction permit for operation on Ch. 43z is from the same site as proposed herein. With maximum peak visual effective radiated power of 2750 kW and antenna radiation center height above average terrain of 417 meters, the pending proposal provides principal city contour encompassment of all of Topeka. Encompassment of Topeka by the proposed allotment with effective radiated power of 5000 kW and antenna radiation center height above average terrain of 417 meters will be achieved, also. In the direction toward Topeka, 85° True, the effective radiated power for the Ch. 55 allotment is 4900 kW. That is in contrast to the approximately 2700 kW radiated toward Topeka in the pending Ch. 43 proposal.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Davis Television Topeka, LLC
Topeka, Kansas

Page 5

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2000.

Bernard R. Segal, P.E.

Bernard R. Segal, P.E.

**ENGINEERING STATEMENT
PREPARED ON BEHALF OF
DAVIS TELEVISION TOPEKA, LLC
TOPEKA, KANSAS**

Topeka Channel 55- NTSC Allotment Study

NAD 1927 Site Reference: 39° 01' 29" N. Lat./95° 55' 19" W. Long.

Ch. Relation- ship	Location	Geographic Coordinates (N. Lat./W. Long.)	Separation	
			Required Minimum (km)	Actual (km)
n-15 (40)	None sufficiently close for concern	---	---	---
n-14 (41)	KSHB-TV, Kansas City, MO	39° 04' 20" 94° 35' 45"	95.7	114.9
n-8 (47)	None sufficiently close for concern	---	---	---
n-7 (48)	None sufficiently close for concern	---	---	---
n-5 (50)	None sufficiently close for concern	---	---	---
n-4 (51)	None sufficiently close for concern	---	---	---
n-3 (52)	None sufficiently close for concern	---	---	---
n-2 (53)	None sufficiently close for concern	---	---	---
n-1 (54)	None sufficiently close for concern	---	---	---
n-0 (55)	None sufficiently close for concern	---	---	---
n+1 (56)	None sufficiently close for concern	---	---	---
n+2 (57)	None sufficiently close for concern	---	---	---
n+3 (58)	None sufficiently close for concern	---	---	---
n+4 (59)	None sufficiently close for concern	---	---	---
n+5 (60)	None sufficiently close for concern	---	---	---
n+7 (62)	KSMO-TV, Kansas City, MO	39° 04' 59" 94° 28' 49"	95.7	125.0
n+8 (63)	None sufficiently close for concern	---	---	---
n+14 (69)	None sufficiently close for concern	---	---	---

**ENGINEERING STATEMENT
PREPARED ON BEHALF OF
DAVIS TELEVISION TOPEKA, LLC
TOPEKA, KANSAS**

DTV Allocation Study for Proposed Topeka, Kansas, NTSC Allotment
Ch. 55-, 5000 kW (MAX-DA), 417 meters
NAD 1927 Site Coordinates: 39° 01' 29" N. Lat./95° 55' 19" W. Long
RCAMSL: 737 m

Ch. Relation- ship	<u>Potentially Affected Desired DTV Station</u>	<u>Appendix B Data</u>		<u>Independent Calculations</u>				
		Base- line <u>Pop.</u> (Thous.)	DTV <u>Svc.</u> (Thous.)	Noise-free Svc. Not Affected <u>by Terrain</u> (Thous.)	Base- line <u>Pop.</u> (Thous.)	DTV <u>Svc.</u> (Thous.)	<u>New Interf. from Prop. Topeka</u> (Thous.) (%)	
n-0 (55)	KOTV-DT, Tulsa, OK Allotment: Ch. 55, 1000 kW (MAX-DA), 573 m C.P., Ch. 55, 970 kW (MAX-DA), 490 m	1,267	1,267 (checklist)	1,268	1,267	1,267	0.2	0.02*

*Rounds to 0% and so complies with the requirement to not create new interference.
Note: n = Ch. 55

AZIMUTH PATTERN (RELATIVE FIELD)

DAVIS TELEVISION TOPEKA, LLC
TOPEKA, KANSAS
CH 55- 5000 KW(MAX-DA) 417 METERS

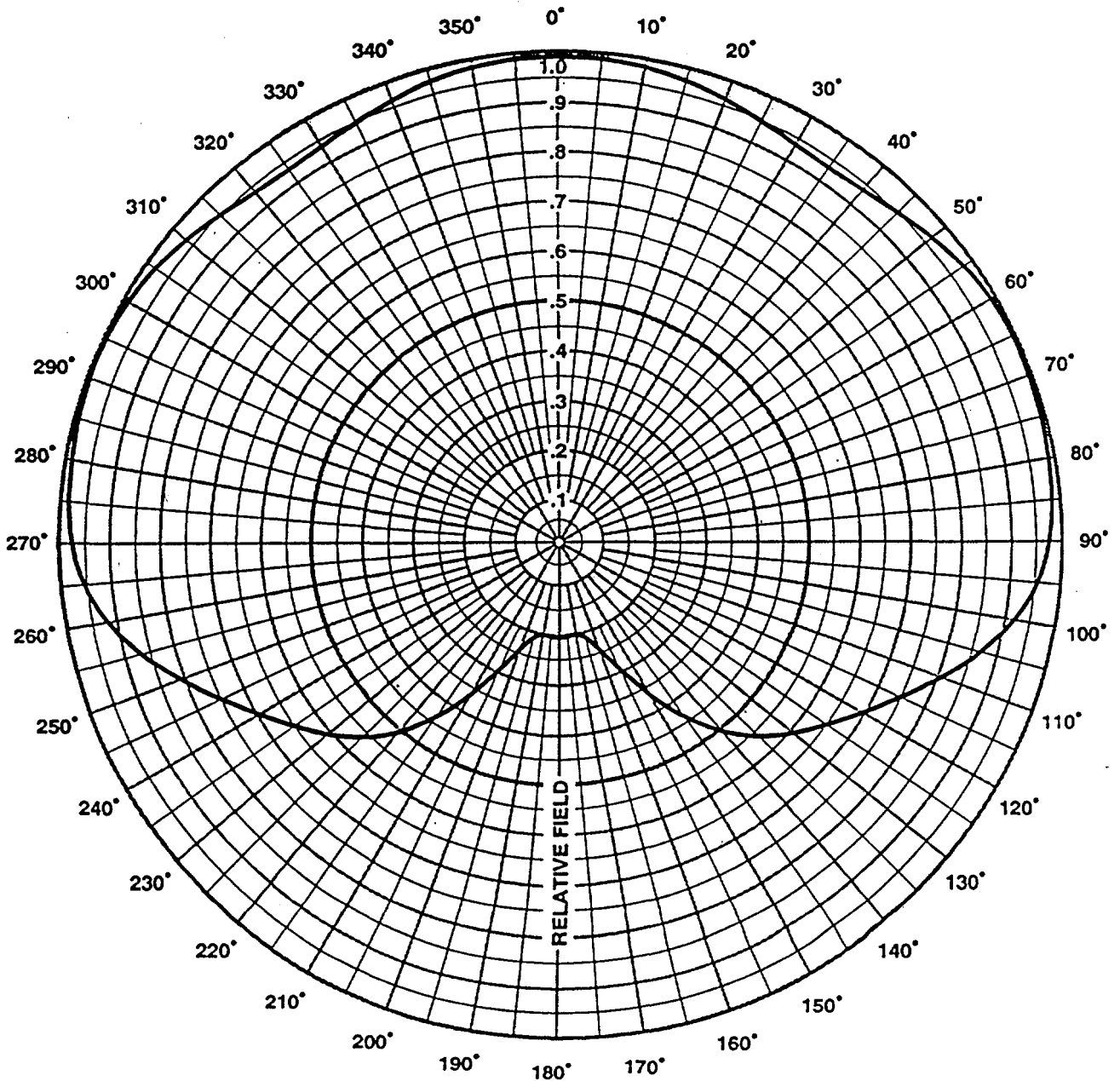
Bernard R. Segal P.E. Consulting Engineer

ANDREW AZIMUTH PATTERN

Type: ATW-C1

	Numeric	dB
Directivity:	<u>1.52</u>	<u>1.82</u>
Peak(s) At:	<u> </u>	<u> </u>
Polarization:	<u> </u>	<u> </u>
Channel:	<u> </u>	<u> </u>
Location:	<u> </u>	<u> </u>

Note: Pattern shape and directivity may vary with channel and mounting configuration.



ANDREW CORPORATION
10500 W. 153rd Street
Orland Park, Illinois U.S.A. 60462



TABULATED DATA FOR AZIMUTH PATTERN

TYPE ATW-C1

ANGLE	RELATIVE FIELD	dB	ANGLE	RELATIVE FIELD	dB	ANGLE	RELATIVE FIELD	dB
0	0.995	-0.04	120	0.695	-3.16	240	0.695	-3.16
2	0.994	-0.05	122	0.676	-3.40	242	0.716	-2.90
4	0.994	-0.05	124	0.657	-3.65	244	0.737	-2.65
6	0.993	-0.06	126	0.639	-3.89	246	0.761	-2.37
8	0.991	-0.08	128	0.622	-4.12	248	0.785	-2.10
10	0.989	-0.10	130	0.605	-4.36	250	0.809	-1.84
12	0.986	-0.12	132	0.587	-4.63	252	0.834	-1.58
14	0.982	-0.16	134	0.568	-4.91	254	0.859	-1.32
16	0.978	-0.19	136	0.548	-5.22	256	0.881	-1.10
18	0.972	-0.25	138	0.525	-5.60	258	0.903	-0.89
20	0.967	-0.29	140	0.501	-6.00	260	0.922	-0.70
22	0.961	-0.35	142	0.474	-6.48	262	0.939	-0.55
24	0.955	-0.40	144	0.446	-7.01	264	0.953	-0.42
26	0.949	-0.46	146	0.417	-7.60	266	0.964	-0.32
28	0.945	-0.49	148	0.387	-8.25	268	0.973	-0.24
30	0.940	-0.54	150	0.357	-8.95	270	0.979	-0.18
32	0.938	-0.56	152	0.326	-9.74	272	0.984	-0.14
34	0.936	-0.57	154	0.299	-10.49	274	0.987	-0.11
36	0.936	-0.57	156	0.274	-11.24	276	0.990	-0.09
38	0.938	-0.56	158	0.251	-12.01	278	0.991	-0.08
40	0.941	-0.53	160	0.232	-12.69	280	0.993	-0.06
42	0.945	-0.49	162	0.218	-13.23	282	0.994	-0.05
44	0.951	-0.44	164	0.206	-13.72	284	0.996	-0.04
46	0.957	-0.38	166	0.199	-14.02	286	0.997	-0.03
48	0.963	-0.33	168	0.194	-14.24	288	0.998	-0.02
50	0.970	-0.26	170	0.192	-14.33	290	0.999	-0.01
52	0.976	-0.21	172	0.192	-14.33	292	1.000	0.00
54	0.982	-0.16	174	0.193	-14.29	294	1.000	0.00
56	0.988	-0.10	176	0.194	-14.24	296	1.000	0.00
58	0.992	-0.07	178	0.195	-14.20	298	0.998	-0.02
60	0.995	-0.04	180	0.196	-14.15	300	0.995	-0.04
62	0.998	-0.02	182	0.195	-14.20	302	0.992	-0.07
64	1.000	0.00	184	0.194	-14.24	304	0.988	-0.10
66	1.000	0.00	186	0.193	-14.29	306	0.982	-0.16
68	1.000	0.00	188	0.192	-14.33	308	0.976	-0.21
70	0.999	-0.01	190	0.192	-14.33	310	0.970	-0.26
72	0.998	-0.02	192	0.194	-14.24	312	0.963	-0.33
74	0.997	-0.03	194	0.199	-14.02	314	0.957	-0.38
76	0.996	-0.04	196	0.206	-13.72	316	0.951	-0.44
78	0.994	-0.05	198	0.218	-13.23	318	0.945	-0.49
80	0.993	-0.06	200	0.232	-12.69	320	0.941	-0.53
82	0.991	-0.08	202	0.251	-12.01	322	0.938	-0.56
84	0.990	-0.09	204	0.274	-11.24	324	0.936	-0.57
86	0.987	-0.11	206	0.299	-10.49	326	0.936	-0.57
88	0.984	-0.14	208	0.326	-9.74	328	0.938	-0.56
90	0.979	-0.18	210	0.357	-8.95	330	0.940	-0.54
92	0.973	-0.24	212	0.387	-8.25	332	0.945	-0.49
94	0.964	-0.32	214	0.417	-7.60	334	0.949	-0.46
96	0.953	-0.42	216	0.446	-7.01	336	0.955	-0.40
98	0.939	-0.55	218	0.474	-6.48	338	0.961	-0.35
100	0.922	-0.70	220	0.501	-6.00	340	0.967	-0.29
102	0.903	-0.89	222	0.525	-5.60	342	0.972	-0.25
104	0.881	-1.10	224	0.548	-5.22	344	0.978	-0.19
106	0.859	-1.32	226	0.568	-4.91	346	0.982	-0.16
108	0.834	-1.58	228	0.587	-4.63	348	0.986	-0.12
110	0.809	-1.84	230	0.605	-4.36	350	0.989	-0.10
112	0.785	-2.10	232	0.622	-4.12	352	0.991	-0.08
114	0.761	-2.37	234	0.639	-3.89	354	0.993	-0.06
116	0.737	-2.65	236	0.657	-3.65	356	0.994	-0.05
118	0.716	-2.90	238	0.676	-3.40	358	0.994	-0.05

	RELATIVE FIELD	dB	AZIMUTH DEGREES
MAXIMUM	1.00	0.00	0 68 294
MINIMUM	.192	-14.33	171 189